

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NOS. C-090335
	:	C-090342
Plaintiff-Appellee,	:	TRIAL NO. B-0806629
vs.	:	<i>JUDGMENT ENTRY.</i>
CHRISTOPHER SMITH,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Christopher Smith appeals his convictions for attempted murder with a specification, aggravated robbery, and having a weapon while under a disability. We conclude that his five assignments of error do not have merit, so we affirm the judgment of the trial court.

Smith was indicted for attempted murder with specifications, felonious assault with specifications, aggravated robbery with specifications, robbery, and having a weapon while under a disability. Smith filed a motion to suppress statements that he had made to police officers and evidence that had been obtained from him. The trial court denied the motion. The case was tried before a jury.

Kara Trieschman-Hooker was an assistant manager of Lee's Famous Recipe restaurant in Springfield Township. Trieschman-Hooker testified that on June 9, 2008, around 9 p.m., she had been closing the restaurant with four other employees when a man entered the store, pointed a gun at her, and demanded money from the

---

<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

safe. According to Trieschman-Hooker, the perpetrator was an African-American man who was wearing a red bandanna over his face. Trieschman-Hooker also noted that the man had on red and black shoes that looked like shoes that Trieschman-Hooker's boyfriend had.

Trieschman-Hooker testified that the man had forced her to walk back to the restaurant's office. He picked up money that was on the desk in the office, turned toward Trieschman-Hooker, and shot her in the face. He then ran out of the restaurant. The bullet from the gun entered Trieschman-Hooker's face on the left side and lodged in her right jaw.

Employees at the restaurant called 911, and Trieschman-Hooker was transported to the hospital. At the hospital the next day, Trieschman-Hooker was shown a photograph array. She identified a person that she thought resembled the perpetrator, but she testified that she had not been sure it was him. The person whom she identified was not Smith.

After speaking with restaurant employees, police officers broadcast a description of the suspect. According to the witnesses, the suspect was an African-American man wearing a large red shirt, black shorts, and black shoes. At least one witness also described the suspect as a light-skinned man with braids in his hair.

Michael Jones testified that he and his girlfriend, Heather Nunamaker, were walking in the area when they encountered Smith. According to Jones, Smith jumped out of bushes near where Jones and Nunamaker were walking. Smith appeared panicky and fidgety. Jones testified that Smith had told Jones and Nunamaker not to go in the direction of the restaurant because there had been a shooting, and police officers were searching for a suspect. Jones and Nunamaker turned around, and Smith began to walk with them. They were soon stopped by a police officer, who advised them to return home. According to Jones, the police officer told Smith that he wanted to talk to him.

Jones testified that he and Nunamaker had begun to walk to a grocery store when they encountered Smith again. According to Jones, Smith came running up to them and then began walking with them. For the second time, a police officer stopped the three people and suggested that they return home. Jones and Nunamaker had begun walking toward their apartment when they heard a police officer telling Smith that he wanted to talk to him. Jones later called the Springfield Township police department to report his encounters with Smith.

Springfield Township Police Officer Clayton Smith received a description of the man who had been encountered by Jones and Nunamaker. As he was patrolling the area, he saw a person matching that description. According to Officer Smith, the man, in addition to matching the description, also interested him because he was walking on Compton Road. Officer Smith testified that, in his experience, it was unusual to see a person walking in that area. He asked the man, whom he later identified as Smith, to stop. Officer Smith testified that Christopher Smith seemed evasive and nervous as he was talking to him. When Officer Smith asked him where he was coming from, Christopher Smith claimed to have been coming from the “Wyoming Apartments.” Officer Smith knew that there were no apartments by that name in the area. Because he felt uneasy about Christopher Smith, Officer Smith handcuffed him and called for backup. Officer Smith told him that he was not under arrest and that other police officers wanted to talk to him. Officer Smith then informed Smith of his *Miranda* rights. Officer Smith testified that he took Christopher Smith to the restaurant to turn him over to Lieutenant David Schaefer. Because Schaefer had left the scene, Officer Smith drove Christopher Smith to the police department.

Schaefer testified about having seen Christopher Smith at the police department. According to Schaefer, he looked at Smith’s shoes and saw what he believed was blood on the shoes. Schaefer took the shoes from Smith. When

Detectives Aaron Fitzgerald and Robert Merkle arrived at the station, Schaefer gave them the shoes. Merkle performed a presumptive blood test on the substance that was on the shoes and determined that it was blood. When Merkle and Fitzgerald interviewed Smith, he denied that he had been in the restaurant. Smith was released from custody after the interview with Fitzgerald and Merkle. After the blood that had been found on Smith's shoe was identified as matching Trieschman-Hooker's, Smith was charged with the offenses.

Smith presented the testimony of forensic expert Larry Dehus. Dehus testified that the police had not followed proper protocol when testing the substance on the shoes, and that it did not appear that the blood had gotten on the shoe as a result of blood spatter after a gunshot. Smith testified on his own behalf that he had been upset that night because he had heard about the shooting, and as a former employee of the restaurant, he had been concerned about his friends who still worked there.

At the conclusion of the trial, the jury found Smith guilty as charged. The trial court merged the felonious-assault count into the attempted-murder count and the robbery count into the aggravated-robbery count. The specifications were merged into the one specification to the attempted-murder count. The court then sentenced Smith to ten years' confinement for attempted murder, with three years for the accompanying specification, to ten years' confinement for aggravated robbery, and to five years' confinement for having a weapon while under a disability. The sentences were consecutive for an aggregate sentence of 28 years.

In his first assignment of error, Smith asserts that his equal-protection rights were violated when the court allowed the state to exclude a potential juror based on race in violation of *Batson v. Kentucky*.<sup>2</sup> During voir dire, the state used two of its

---

<sup>2</sup> (1986), 476 U.S. 79, 106 S.Ct. 1712.

peremptory challenges to excuse two African-American men from the jury. Smith now takes issue with the exclusion of the second African-American man.

Evaluation of a *Batson* challenge has three steps: “First, the opponent of the strike must make a prima facie showing of discrimination. Second, the proponent must give a race-neutral explanation for the challenge. Third, the trial court must determine whether, under all the circumstances, the opponent has proven purposeful racial discrimination.”<sup>3</sup> A trial court’s determination that the state did not have a discriminatory intent will be reversed only if it is clearly erroneous.<sup>4</sup>

Here, the state used its peremptory challenge to excuse prospective juror Madaris, who was an African-American man. When challenged by defense counsel, the assistant prosecutor explained that she had used her challenge because Madaris had disclosed that he had had a bad experience with a police officer who, Madaris believed, had stopped him unjustifiably during a robbery investigation. The assistant prosecutor stated, “I don’t want that association with this juror having [sic] with the defendant because he shared a similar situation in his eyes.” The trial court found that the state had given a race-neutral explanation and overruled the challenge. We conclude that the court’s determination was not clearly erroneous. The first assignment of error is overruled.

Smith’s second assignment of error is that the trial court erred when it overruled his motion to suppress. Smith contends that Officer Smith did not have probable cause to stop and arrest him. For that reason, Smith argues that any statements that he made and any evidence obtained from him, including his shoes and DNA evidence, should have been suppressed by the trial court.

---

<sup>3</sup> *State v. White*, 85 Ohio St.3d 433, 436, 1999-Ohio-281, 709 N.E.2d 140, citing *Batson*, supra, at 96-98.

<sup>4</sup> *State v. Hernandez* (1992), 63 Ohio St.3d 577, 583, 589 N.E.2d 1310.

Our review of the trial court's denial of the motion to suppress presents a mixed question of fact and law.<sup>5</sup> We must accept the trial court's findings of fact if they are supported by competent and credible evidence.<sup>6</sup> Then we must conduct a de novo review to determine if the trial court properly applied the law to those facts.<sup>7</sup>

During the hearing on the motion to suppress, Fitzgerald, Officer Smith, Schaefer, and Officer Doug Eveslage testified. The trial court concluded that the testimony of the officers was very credible, and that Officer Smith had had a reasonable, articulable suspicion to stop Smith. The court also concluded that when Smith was handcuffed and transported to the Springfield Township police station, his detention was justifiable, as Officer Smith had probable cause to arrest him at that point. Finally, the trial court concluded that the seizure of Smith's shoes was proper because Smith had consented to the seizure.

We conclude that the trial court's factual determinations were supported by competent and credible evidence. And the trial court did not err as a matter of law when it overruled Smith's motion to suppress. Officer Smith's stop of Smith was reasonable, in view of the descriptions that had been broadcast and Officer Smith's reliance on his experience that it was unusual for a person to be walking where Smith had been. Further, Officer Smith's detention of Smith was reasonable, in view of Smith's evasiveness and nervousness. Although Officer Smith testified that the detention was not an arrest, the totality of the facts and circumstances supported a finding of probable cause to arrest Smith.<sup>8</sup> Finally, the seizure of the shoes was proper, as Smith had consented to the seizure. The second assignment of error is overruled.

---

<sup>5</sup> *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶8.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See *State v. Elmore*, 111 Ohio St.3d 515, 2006-Ohio-6207, 857 N.E.2d 547, ¶39.

We consider the third and fourth assignments of error together. In the third, Smith asserts that the state did not present sufficient evidence to support his convictions. And in the fourth, he asserts that the convictions were against the manifest weight of the evidence.

When an appellant challenges the sufficiency of the evidence, we must determine whether the state presented adequate evidence on each element of the offense.<sup>9</sup> On the other hand, when reviewing whether a judgment is against the manifest weight of the evidence, we must determine whether the jury clearly lost its way and created a manifest miscarriage of justice.<sup>10</sup>

Here, the state presented sufficient evidence of each element of the offenses of attempted murder,<sup>11</sup> aggravated robbery,<sup>12</sup> and having a weapon while under a disability.<sup>13</sup> And having reviewed the entire record, we cannot conclude that the jury's verdicts were against the manifest weight of the evidence. Smith had Trieschman-Hooker's blood on his shoe when he was stopped by Officer Smith. He offered no credible support for his theory that the blood either had been planted on his shoes or had transferred there accidentally. The testimony about his encounters with Jones added weight to the state's case. The jury was in the best position to determine the credibility of the witnesses. And we cannot say that the jury lost its way when it found Smith guilty of the offenses. The third and fourth assignments of error are overruled.

In his final assignment of error, Smith asserts that he was deprived of the effective assistance of counsel. To prevail on this assignment of error, Smith must demonstrate that his counsel's performance was deficient and that, absent his counsel's

---

<sup>9</sup> See *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

<sup>10</sup> See *id.* at 387.

<sup>11</sup> R.C. 2923.02(A).

<sup>12</sup> R.C. 2911.01(A)(1).

<sup>13</sup> R.C. 2923.13(A)(3).

errors, the result of the trial would have been different.<sup>14</sup> Here, Smith makes a general claim that his counsel was ineffective. He points to no specific example of deficient performance. We conclude that Smith has not demonstrated that his counsel was ineffective. The final assignment of error is without merit.

Therefore, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**CUNNINGHAM, P.J., SUNDERMANN and HENDON, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on March 17, 2010

per order of the Court \_\_\_\_\_.  
Presiding Judge

---

<sup>14</sup> See *State v. Bradley* (1989), 42 Ohio St.3d 136, 142, 538 N.E.2d 373; *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052.